IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO. 28144 OF 2007

Dated : December 31, 2007

Between:

M/s. Pasha Educational Training Institute,
G-5, Pasha Court, 71, Greenlands Road,
Panjaguta, Hyderabad,
Rep.by its Chairman, Mr. Asadhulla Pasha

Petitioner

AND

The Commissioner of Customs & Central Excise,
Service Tax Cell, Hyderabad - II,
Commissionerate, 3rd Floor, Shakkar Bhavan,
Fatehmaidan Road, Hyderabad and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO. 28144 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of mandamus directing the Customs, Central Excise and Service Tax Appellate Tribunal, Bangalore, to dispose of the appeal filed by the petitioner against the order dated 31.08.2007 in Appeal No. 35 of 2007 (H.H) Service Tax by the first respondent expeditiously, the petitioner filed this writ petition.

The petitioner is a charitable educational trust formed with the object of imparting training/coaching in various educational fields and they are not commercial in nature. In furtherance of such object, it established Pasha Institute of Insurance & Management Training, Pasha Institute of Healthcare, Pasha Institute of Media Studies, Pasha Institute of Performing Arts and A.P.M. Kindergarten School. The petitioner is exempted from payment of income tax.

While so, the petitioner received a notice dated 23.01.2006 from the Joint Commissioner, Customs and Central Excise, Hyderabad - II requiring the petitioner to register itself with the Service Tax Authorities and to furnish the details of month wise payments received for providing services with effect from 1.7.2003 along with tax returns for the corresponding years, to which the petitioner filed reply dated 11.12.2006 claiming exemption from payment of service tax, under various notifications. Subsequently, on 18.08.2006, a show cause notice was

issued by the second respondent, calling upon the petitioner to explain as to why an amount of Rs.28,02,950/- towards Service Tax and an amount of Rs.70,070/- towards Education Cess should not be levied for the period from July, 2003 to March, 2006, apart from imposition of penalties and interest. The petitioner filed reply to the said notice on 19.9.2006, but the second respondent, dissatisfied with the submissions made by the petitioner, passed an Order-in-Original No.6 of 2006 dated 29.12.2006, holding that the services provided by the petitioner are not covered by the Notification No.10 of 2003 and that the activity of the petitioner falls within the definition of *Commercial Training or Coaching* and, hence, is liable for payment of tax and demanded an amount of Rs.38,02,950/- towards Service Tax, Rs.70,070/- towards Education Cess for the commercial coaching activity for the period from 1.7.2003 to 31.3.2006 with interest on the said amount. A penalty of Rs.100/- per day until payment of duty, penalty of Rs.1000/- for contravention of provisions of Finance Act, 1994 and also a penalty of Rs.38,73,020/- for suppressing the value of tax on services, were levied. Aggrieved by the said order, petitioner herein preferred appeal being Appeal No. 35 of 2007 before the first respondent and the first respondent vide order dated 31.8.2007 dismissed the same. Aggrieved thereby, the petitioner preferred appeal before the Customs, Central Excise and Service Tax Appellate

Tribunal, Bangalore. Along with the appeal, the petitioner also filed stay petition and subsequently, it also submitted a letter seeking early disposal of the appeal.

Heard the learned counsel for the petitioner and the learned Asst. Solicitor General of India.

The learned counsel for the petitioner submitted that the fact that the petitioner is a Charitable Trust and is not carrying on the activity on commercial lines, is not appreciated by both the original and appellate authorities in correct perspective and therefore, the finding that the petitioner falls within the ambit of *Commercial Coaching and Training* under Sec.65(27) of the Finance Act, 1994 cannot be sustained.

While the learned Asst. Solicitor General of India, vehemently opposed the prayer of the petitioner.

Having regard to the facts and circumstances of the case and having heard both the counsel, we feel that the ends of justice would be met, if stay of recovery of the demanded tax is granted subject to the condition of the petitioner depositing half of the demanded amount. Accordingly, there shall be stay of recovery of the demanded amount on the condition of the petitioner depositing half of the demanded amount within a period of eight weeks from today. The Tribunal is directed to dispose of the appeal preferred by the petitioner within a

period of six months from the date of receipt of a copy of this order.

With these directions, the writ petition is disposed of. No order as to costs.

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T.MEENA KUMARI, J.

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G.ROHINI, J.

December 31, 2007
MAS.